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United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

Eleventh session
(5, 6 and 15 February 2007)

General Assembly
Official Records
Sixty-second Session
Supplement No. 37 (A/62/37)

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Note

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Chapter I
Introduction

1. The eleventh session of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996 was convened in accordance with paragraph 23 of General Assembly resolution 61/40 of 4 December 2006. The Committee met at Headquarters on 5, 6 and 15 February 2007.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. At its 38th meeting, on 5 February 2007, the Committee elected Diego Malpede (Argentina) as Vice-Chairperson to replace Carlos Fernando Díaz Paniagua (Costa Rica), who was no longer available to serve in that capacity. The Committee paid tribute to Mr. Díaz Paniagua for his valuable contributions to the work of the Committee, in particular with regard to the coordination of consultations on outstanding issues concerning the draft comprehensive convention on international terrorism. The other members of the Bureau of the Committee at the previous session continued to serve in their respective capacities. The Bureau was thus constituted as follows:

Chairman:
Rohan Perera (Sri Lanka)

Vice-Chairpersons:
Diego Malpede (Argentina)
Maria Telalian (Greece)
Sabelo Sivuyile Maqungo (South Africa)

Rapporteur:
Lublin Dilja (Albania)

4. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee, assisted by George Korontzis as Deputy Secretary. The Codification Division of the Office of Legal Affairs provided the substantive services for the Committee.

5. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.16):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions contained in the mandate of the Ad Hoc Committee as set out in paragraph 22 of General Assembly resolution 61/40 of 4 December 2006.
6. Adoption of the report.

6. The Ad Hoc Committee had before it the report on its tenth session,[1] as well as the report on its sixth session,[2] containing, inter alia, a discussion paper prepared by

the Bureau on the preamble and article 1 of the draft comprehensive convention on international terrorism; informal texts of articles 2 and 2 bis, prepared by the coordinator; the texts of articles 3 to 17 bis and 20 to 27 prepared by the Friends of the Chairman; texts relating to article 18, one circulated by the coordinator for discussion and the other proposed by the States members of the Organization of the Islamic Conference; and a list of proposals made during the informal consultations on the preamble and article 1 appended to the report of the coordinator on the results of the informal consultations in the Ad Hoc Committee. The Committee also had before it two 2005 letters from the Permanent Representative of Egypt to the United Nations concerning the convening of a high-level special session of the General Assembly on cooperation against terrorism.[3]

Chapter II
Proceedings

7. The Ad Hoc Committee held two plenary meetings: the 38th on 5 February and the 39th on 15 February 2007.

8. At the 38th meeting, the Ad Hoc Committee adopted its work programme and decided to proceed with discussions in informal consultations and informal contacts. At the same meeting, Ms. Telalian, the Vice-Chairperson who had been requested by the Chairman of the Working Group of the Sixth Committee on measures to eliminate international terrorism to coordinate informal contacts among delegations intersessionally on the outstanding issues concerning the draft comprehensive convention on international terrorism on behalf of the Chairman in his absence, was further requested to continue her consultations during the current session of the Ad Hoc Committee.

9. The informal consultations regarding the draft comprehensive convention on international terrorism were held on 5, 6 and 9 February and informal contacts were held on 5 and 6 February, as well as between 7 and 14 February, in the margins of the session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The informal consultations concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations were held on 6 February. During the informal consultations, on 5 February, Ms. Telalian made a statement regarding the results of the informal contacts held intersessionally; and on 9 and 15 February she made statements on the informal contacts held during the current session.

10. At the 39th meeting, the Chairman presented his report on the exchange of views in the Committee, on the results of the informal consultations and informal contacts on the draft convention and on the question of convening a high-level conference. That report, which includes a summary of the statements made by Ms. Telalian, is contained in the annex to the present report. The annex is for reference purposes only and is not a record of the discussions.

11. At the same meeting, the Ad Hoc Committee adopted the report on its eleventh session.

Chapter III
Recommendation

12. At the 39th meeting, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the sixty-second session of the Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

Annex

Informal summaries by the Chairman on the exchange of views in plenary meeting and on the results of the informal consultations and informal contacts on the draft comprehensive convention on international terrorism and on the question of convening a high-level conference

A. General

1. During the general exchange of views at the 38th meeting of the Ad Hoc Committee, on 5 February 2007, delegations reiterated their condemnation of international terrorism in all its forms and manifestations, with some stressing that it cannot be justified on any grounds, irrespective of its motivations and objectives. The continuing importance of the work in this field by the United Nations in general, and the General Assembly in particular, was highlighted. It was recalled that international terrorism was a global phenomenon requiring a global response. In that connection, some delegations welcomed the adoption by the Assembly of the United Nations Global Counter-Terrorism Strategy in its resolution 60/288 of 8 September 2006 and recalled its relevance to the work of the Ad Hoc Committee.

2. It was stressed by some delegations that the fight against international terrorism should be conducted in conformity with the Charter of the United Nations, as well as relevant provisions of international human rights, international humanitarian law and international refugee law. Other delegations called for an enhanced dialogue among civilizations and stressed their rejection of any attempt to link terrorism with any religion, race, culture or ethnic origin. Concern was also expressed by some delegations over the possible use of a double standard in the fight against international terrorism, while other delegations emphasized the need to address the root causes of terrorism.

B. Draft comprehensive convention on international terrorism

3. During the general exchange of views at the 38th meeting of the Ad Hoc Committee, delegations reiterated the importance they attached to the early conclusion of the draft comprehensive convention on international terrorism. It was considered that such an instrument would constitute an important addition to the counter-terrorism legal framework established by the existing universal instruments. Delegations emphasized their continued willingness to explore new ideas and proposals, with a view to resolving the outstanding issues and concluding a consensus text. It was noted that following the adoption of the Global Counter-Terrorism Strategy, the finalization of the draft comprehensive convention remained the most important counter-terrorism initiative outstanding from the 2005 World Summit Outcome (Assembly resolution 60/1).

4. Some delegations reiterated their commitment to reaching an agreement on the text of the draft convention preferably on the basis of the former coordinator's text. It was noted that the instrument to be concluded should represent a significant addition to the existing counter-terrorism legal framework and should not provide strength to those who use violence against civilians to further political objectives.

Moreover, the instrument should not create ambiguity or confusion about the critical distinction between terrorism and violations of international humanitarian law.

5. Some other delegations emphasized the importance of including, in the draft comprehensive convention, a legal definition of terrorism to distinguish it from the legitimate struggle of peoples for self-determination. In addition, other delegations expressed the view that State terrorism would have to be included in any comprehensive convention on international terrorism. It was reiterated that acts of State terrorism were of serious concern to the international community and that such acts only contributed to a vicious cycle of terrorism.

1. Summary of briefing on the results of intersessional informal contacts

6. In her briefing on the informal intersessional contacts, Maria Telalian, Vice-Chairperson, recalled that there was a wish among delegations during the consultations in the context of the 2006 Working Group of the Sixth Committee for a mechanism to informally coordinate contacts among delegations in the intersessional period in the lead-up to the convening of the current session of the Ad Hoc Committee. Following further consultations with the Friends of the Chairman, she was requested to coordinate such informal contacts on behalf of the Chairman and of the Bureau.

7. Several such contacts with delegations were organized in January and February 2007, and they took the form of informal meetings with individual delegations and weekly scheduled contacts, which were announced in the *Journal of the United Nations* on 11, 18 and 25 January and 1 February. The purpose of the bilateral contacts was to gain further insight into the views of delegations on the outstanding issues concerning the draft comprehensive convention, while also seeking to preserve the integrity of the bulk of the negotiated text of 2000; the occasion of the contacts was also used to apprise new delegates of the latest developments.

8. In order to assist delegations, a compilation of the various proposals that had focused on the outstanding issues in recent years was prepared for circulation. The circulation of the most recent proposals was not in any way intended to prejudice the understanding concerning the working methods of the Committee and Working Group that all written and oral proposals remained on the table. Also included in the compilation was an information note containing ideas that had emerged during bilateral contacts at the 2006 session of the Ad Hoc Committee and had been made available at the close of that session without any substantive debate; the Chairman of the Ad Hoc Committee had on that occasion encouraged delegations to examine those or any other ideas in depth among themselves and in their capitals.

9. During the intersessional contacts, delegations affirmed their commitment in support of the continuing efforts to finalize as a matter of priority the draft comprehensive convention on international terrorism. While delegations reaffirmed their positions and alluded to their preferences, Ms. Telalian was encouraged by the willingness of delegations to explore possibilities that would help in reaching consensus on the text; there was a guarded determination among delegations to make a renewed attempt to find a solution to the outstanding issues, a focused sense of responsibility to explore possible openings in the context of what had already been achieved and a recognition of the need to preserve the integrity of previous accomplishments.

10. During the intersessional contacts, a few delegations made some preliminary comments on the substance of some of the ideas contained in the information note, particularly on the idea that nothing in the convention makes unlawful acts committed in situations of international armed conflict, which are governed by international humanitarian law and which are not unlawful under that law, pointing out that it covered only situations of international armed conflict, leaving out of the scope of the draft convention situations of non-international armed conflicts, which, in their view, did not find any justification in existing international humanitarian law. Likewise, they emphasized that the term "unlawful" used in that idea was ambiguous and confusing. Others did not comment on the ideas, electing to observe that the matters were being studied in the capitals.

11. Moreover, as in the past, the focus of the contacts was on draft article 18. Although no specific new proposals were presented, a number of delegations indicated that the proposal contained in document A/C.6/60/INF/1 was a step in the right direction. With respect to paragraph 2 of draft article 18, it was noted by some delegations that a clear delineation between those activities that were governed by international humanitarian law and those covered by the draft convention was necessary. While document A/C.6/60/INF.1 contained elements that held promise, the proposal needed further work, and there was a willingness to explore other possibilities and options that would enhance appreciation of the demarcation needed in order to carve out the scope of application of the draft convention. Some delegations noted in that regard the possibility of capturing the essence of the demarcation in the form of a "without prejudice" clause. It was emphasized by other delegations that such an undertaking should be worked around the language of draft article 18 without departing too much from it. Some delegations doubted that the proposal opened any further avenues for compromise.

12. During the intersessional contacts, some delegations noted that it would be necessary to explore further the possibility of clarifying the understanding of the scope of the exclusion in paragraph 3 of draft article 18, in particular the rules of international law that applied particularly in peacetime to activities of military forces of a State acting in an official capacity. In this connection, Ms. Telalian recalled that the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Acts of Nuclear Terrorism contained in the preamble some language that was intended to shed light on this question. The penultimate preambular paragraph reads:

> *Noting* that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

13. Ms. Telalian concluded her briefing by expressing confidence that from her bilateral contacts there seemed to be some ideas that could form a basis for a possible package, which in her view would help to move the process forward and would facilitate reaching a compromise solution.

2. Summary of statements on the results of informal contacts held during the current session

14. In her statement on 9 February 2007, Ms. Telalian noted that additional informal contacts with delegations during the current session had assisted her in forming a better impression of their views. Accordingly, she had reflected further on the ideas that had been presented intersessionally and thought it useful to present a text that she hoped captured the concerns of delegations in a way that would facilitate agreement on elements of an overall package. The text read as follows:

Preamble

Add preamble from the Nuclear Terrorism Convention and the Terrorist Bombings Convention

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Text relating to article 18 of the draft comprehensive convention

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws; acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws.

5. This Convention is without prejudice to the rules of international law applicable in armed conflict, in particular those rules applicable to acts lawful under international humanitarian law.

15. In explaining the elements of a package consisting of a preamble, an addition to paragraph 4 and a new paragraph 5, it was noted that the preamble was based on language contained in the Terrorist Bombings and Nuclear Terrorism Conventions.

16. With respect to paragraph 3 of draft article 18, it was noted that it had always been understood that it was intended to cover both procedural and substantive aspects. The phrase "inasmuch as they are governed by other rules of international law" embraced conduct both lawful and unlawful under international law. It was pointed out that in reality, military forces of a State were subject to a code of

conduct separate from that applicable to civilians, which included trial by court martial; moreover, when such forces were engaged in peacekeeping operations, different rules of engagement applied.

17. It was further stated that paragraph 3, as read with paragraph 4, was to be understood as meaning that it did not make lawful otherwise unlawful acts. Moreover, such acts, if unlawful did not preclude prosecution under other laws. In order to accentuate further that no impunity was intended and to remove any doubts as to the scope of paragraph 3 as read with paragraph 4, there was an addition to paragraph 4, which sought to stress that there was an inner core of offences that should remain punishable irrespective of the regime that would apply. The use of the word "punishable" denotes the legal regime concerning those acts.

18. With regard to the new paragraph 5, it was noted that it consisted of a general statement that was subsequently clarified with regard to rules of international law applicable for certain acts that would be lawful under international humanitarian law. It was underscored that it would be for the parties to the convention and consequently the judicial authorities to make interpretations in the light of circumstances in relevant specific cases. Stressing that the draft convention was a criminal law enforcement instrument, it was noted that parties would be responsible for its implementation in the context of other rules that formed part of the international legal system. Any relationship between the convention and international humanitarian law would have to be determined in accordance with the circumstances particular to each case. What was key to the addition was the principle that international humanitarian law was not prejudiced by the convention and that the elements offered provided sufficient guidance for those who would be responsible for its interpretation and application to proceed with its good-faith implementation.

19. It was further clarified that in trying to overcome a problem that had legal and political ramifications, an attempt had been made to do so legally by renvoi to the other applicable law and by recognizing the relevance of other laws that would be applicable in similar circumstances; in such circumstances a satisfactory delineation would not be achievable because in such matters there was potential for overlap.

20. It was stressed that the elements needed to be considered carefully and reflected upon as an honest attempt to bridge a gap that had been insurmountable since 2000. All the elements needed to be read in their totality as providing a comprehensive exclusionary scope of application clauses.

21. Delegations were urged to consult with their capitals with a view to ascertaining whether those elements could form the basis of an overall package.

22. In her statement on 15 February 2007, Ms. Telalian stated that further bilateral contacts were held with delegations on 12, 13 and 14 February. Being aware that more time would be required for delegations to consult with capitals, she explained that the purpose of the bilateral contacts was to provide delegations with a further opportunity to remain engaged and to clarify where necessary aspects of the elements of the non-paper that was presented on 9 February.

23. Ms. Telalian observed that in the main, delegations refrained from delving into the substance of the non-paper; and in situations where comments were made, it was by way of seeking clarification or making preliminary personal reflections without stating official positions. It was noted that delegations stressed the need for more

time for reflection, pointing out that at the present stage the mechanism of bilateral contacts provided a satisfactory informal framework for distilling their views. The need to proceed step by step without haste while maintaining the momentum generated was emphasized. In this regard, the need to continuing work intersessionally was stressed. While encouraged by the positive attitude of delegations, Ms. Telalian noted that in the coming weeks it would be possible to make a better judgement of where matters stood, as delegations offered comments on the substance of the non-paper. In concluding, she underscored the importance of political will, which in this case required sagacity to seize the moment and recognition that the draft convention was intended to operate against the background of other regimes that should be safeguarded to the extent that the international legal system allowed.

C. Question of convening a high-level conference

24. During the 38th meeting of the Ad Hoc Committee, on 5 February, some delegations reiterated their full support for the convening of the high-level conference and they urged all Member States to support it. Some other delegations expressed their support in principle while indicating their flexibility regarding the timing. It was noted by some delegations that the question should be considered following an agreement on the draft comprehensive convention. The sponsor and other delegations observed that the question of the convening of the conference should be considered without linking it to the draft comprehensive convention, as the conference could address other issues, such as the underlying causes of terrorism and the definition thereof.

25. In the informal consultations on 6 February, the sponsor delegation of Egypt provided an update on some developments relating to the convening of a high-level conference. It noted in particular that the proposal had been endorsed by the Movement of Non-Aligned Countries in the 2006 Putrajaya Declaration, adopted at the Ministerial Meeting of the Coordinating Bureau of the Movement (A/60/1002-S/2006/718, annex V), as well as in the final document of its 2006 summit, held in Havana (A/61/472-S/2006/780, annex I). In the view of the sponsor delegation, the high-level conference would adopt a declaration of principles condemning terrorism and a plan of action to fight terrorism and to address its root causes. It reiterated that the convening of the conference should not be tied to the completion of the work on the draft comprehensive convention, as some of the topics to be addressed by the conference would not be covered in the discussions on the draft convention. Moreover, the conference would be helpful in clarifying certain misunderstandings relating to terrorism and could also accelerate the adoption of the convention. This position was supported by some delegations.

26. Other delegations reiterated their support for the consideration of the proposal in principle. However, they emphasized that it should be considered after the finalization of the draft convention and upon arriving at a consensus on the topics that should be discussed by the conference.

Notes

[1] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 37* (A/61/37).

[2] Ibid., *Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1). See also the reports of the Ad Hoc Committee on its seventh to tenth sessions (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37); ibid., *Fifty-ninth Session, Supplement No. 37* (A/59/37); and ibid., *Sixtieth Session, Supplement No. 37* (A/60/37)). See also the reports of the Working Group established at the fifty-fifth to sixtieth sessions of the General Assembly (A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9, A/C.6/58/L.10, A/C.6/59/L.10 and A/C.6/60/L.6). The summary of the oral report of the Chairman of the Working Group established at the sixty-first session is contained in document A/C.6/61/SR.21.

[3] Letters dated 1 and 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General and the Chairman of the Sixth Committee, respectively (A/60/329 and A/C.6/60/2).

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